



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

Mountain  
Plains  
Region

1244 Speer Boulevard  
Denver, CO 80204

Reply to  
Attn. of: SP 94-C-2

NOV 8 1993

Subject: Nonprocurement Debarment and Suspension/Drug-Free Workplace Requirements

To: STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas, Missouri ED,  
(Special Nutrition Programs) Montana OPI, Nebraska ED, North Dakota,  
South Dakota, Utah, Wyoming ED

Attached is a copy of the Nonprocurement Debarment and Suspension/Drug Free Workplace Requirements. Included is Part 3017 which incorporates the previous requirements pertaining to nonprocurement debarment, suspension, and the drug-free workplace.

The certification for debarment and suspension is obtained only once, during the solicitation process. If there is no solicitation process, then the certification would be part of the contractual agreement. This requirement is for new contracts only, not renewal options for current contracts.

Examples of the required certifications are also included in this material; if you have any questions please call our office.

for  
ANN C. HECTOR  
Regional Director  
Special Nutrition Programs

Attachment: Nonprocurement Debarment and Suspension/Drug-Free Workplace Requirements



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

3101 Park Center Drive  
Alexandria, VA 22302

SUBJECT: Nonprocurement Debarment and Suspension/Drug-Free  
Workplace Requirements

TO: Regional Administrators  
All Regions

JUN 5 1989

THROUGH: Vernon R. Morgan, Director  
Office of Regional Operations *(Encl 6/5/89)*

The Nonprocurement Debarment and Suspension final common rule for the Department of Agriculture was published in the Federal Register on January 30, 1989. It was followed the next day with an interim final common rule for all Federal agencies on Governmentwide Drug-Free Workplace Requirements. For USDA, both of these rules have been codified together in 7 CFR Part 3017. Attached is a consolidated working copy of 7 CFR Part 3017, and the implementation materials that we received from the Department's Office of Finance and Management (OFM) on these requirements (Attachments I and II).

Nonprocurement Debarment and Suspension Requirements

Debarment is an action taken by a Federal agency to exclude a person (or other entity) from participating in any transactions involving Federal funds or other assistance. Suspension is an action taken to immediately exclude a person from such transactions for a temporary period pending the completion of a debarment or other legal action. A debarment and suspension system applicable to Federal procurement under the Federal Acquisition Regulations (FAR) has been in effect for a number of years. The common rule adopted by the Department establishes a similar debarment and suspension system for a broad range of transactions under Federal nonprocurement programs. Included are grants and lower level transactions arising under grants. The system established by the common rule is authorized under Executive Order 12549 which was signed on February 18, 1986.

Under the common rule, persons or entities that are debarred or suspended by an agency are, with few exceptions, to be excluded from financial and nonfinancial assistance and benefits under other Federal nonprocurement programs and activities. The provisions of the rule apply at both the primary (e.g., grantee) and lower tier (e.g., subgrantee) levels, but they do not apply to transactions that are considered to be entitlements or mandatory awards. As a result, most FNS/State/local agreements are not subject to these requirements. However, State/local discretionary grants and many program related contracts at the State and local levels are covered.

A grantee, subgrantee, contractor, or other entity must certify that it has not been debarred or suspended by a Federal agency before it can

enter into a covered contract or agreement. This certification requirement applies to new or renewed agreements and contracts and not to existing ones. Copies of the certification statements prescribed by the common rule for primary and lower tier transactions are attached for your information (Attachments III and IV).

We have recently been advised by the Office of General Counsel (OGC) that program specific regulations are not required to implement the debarment and suspension requirements. However, application of the "generic" provisions of the common rule to FNS's multi-faceted program operations means that appropriate agency guidance must be developed if we are to have effective implementation of these provisions at the State and local levels. Program regulations, while not required for implementation, will be updated to reflect the applicable requirements of the common rule. This will be done essentially through references to 7 CFR Part 3017.

We would like to get Regional input on the guidance needed to implement these requirements as well as on the problems and issues that may come up during implementation. As a preliminary step to developing implementation guidance, we have reviewed FNS Program transactions at the Federal, State and local levels to determine whether or not they are covered by the common rule. Determinations regarding coverage were made in accordance with the definitions and exceptions provided in paragraph 3017.110(a) of the rule. Attached is a list showing which program transactions we believe are and are not covered (Attachment V). You will find this list helpful for focusing in on implementation issues and guidance needs. We would appreciate receiving regional comments or questions concerning implementation of these requirements within three weeks from the date of this memorandum. We will provide additional implementation materials, as necessary, based on regional input.

The common rule also provides authority and fair hearing procedures for taking debarment and suspension actions against entities in program transactions that come under the common rule. Once implementation of the certification requirements is under way, we will be developing internal FNS procedures for conducting debarment and/or suspension actions in the event that such actions are determined to be appropriate and necessary. We anticipate that this will be accomplished through the issuance of an agency instruction on the subject.

#### Drug-Free Workplace Requirements

The governmentwide drug-free workplace requirements in the common rule require Federal grantees to certify that they will provide and maintain drug-free workplaces as a condition of receiving Federal grant assistance. These requirements implement the Federal grant provisions of the Drug-Free Workplace Act of 1988, part of the omnibus drug

legislation enacted on November 18, 1988. The provisions in the Act that deal with Federal procurement have been implemented by amending the FAR.

The drug-free workplace requirements of the common rule apply to direct Federal grant agreements only. For FNS, covered agreements would include all Federal/State agreements, all Regional Office Administered Program (ROAP) agreements, and the grants and cooperative agreements administered by the Contracts Branch, Administrative Services Division. Effective March 18, 1989 a Federal agency may not enter into a new grant agreement or renew an existing agreement unless a drug-free workplace certification is obtained from the grantee. Certification is not required for existing agreements. By signing the certification, the grantee agrees to provide and maintain a drug-free workplace by implementing a seven point program.

The common rule does not require any Federal monitoring to ensure that grantees have drug-free workplaces even though it does establish sanctions that may be taken for false certification, failure to carry out the drug-free workplace requirements, or failure to make a good faith effort to provide a drug-free workplace as evidenced by employee drug convictions. These sanctions include: suspension of grant payments, suspension or termination of the grant, and governmentwide debarment or suspension action.

OGC has recently advised us that implementation of the drug-free workplace requirements, like the debarment and suspension requirements, will not require program specific regulations. Because we are in the middle of a year, some direct FNS agreements (e.g., Federal/State agreements) are not immediately affected by the drug-free workplace certification requirements. However, applications from some ROAP sponsors (e.g., for the Summer Food Service Program) are being processed during this time of year. Regional offices should forward the Department's Drug-Free Workplace Certification Form and instructions requiring its completion to such sponsors. A sponsor's application should not receive final approval until a signed certification is obtained. A signed certification form must also be obtained for any ROAP adult day care agreement or other ROAP agreement approved on or after March 18. A supply of these forms has been provided to each region (with ROAP responsibilities) by the Office of Grants Management. In addition, a camera ready copy of the form is attached for your Region's use if additional forms are needed (Attachment VI).


It is intended that the Summer sponsor application and other ROAP agreement forms, as well as our Federal/State agreements, will be revised to include the drug-free workplace certification requirements.

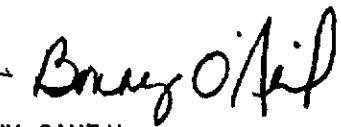
Revised agreement forms should be available later this year. Until then, separate drug-free workplace certification statements must be obtained, as needed, when new ROAP or State agency agreements are signed or when existing agreements are renewed. Program regulations will also be updated to reflect the drug-free workplace requirements of the common rule. As in the case of debarment and suspension requirements, this will be done essentially through references to 7 CFR Part 3017.

We have identified a number of issues and questions regarding application of the drug-free workplace requirements to our program grantees. These are dealt with in the attachment entitled "Drug-Free Workplace Requirements for FNS Grantees - Questions and Answers" (Attachment VII). We are not planning to develop any additional guidance material on these requirements, however, we will keep regions informed if additional questions come up.

The Office of Grants Management in Financial Management is coordinating this matter at the Headquarters level. If your staff has any questions or would like further information, they may contact David Temoshok (756-3048) or Henry Dubois (756-3847) of that office. Program specific questions may also be directed to Stanley Garnett, Special Nutrition Programs (756-3054) or Abigail Nichols, Food Stamp Program (756-3414).

  
JACK RADZIKOWSKI  
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Food Stamp Program

Attachments

# U.S. DEPARTMENT OF AGRICULTURE

## Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

## INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective primary participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**U.S. DEPARTMENT OF AGRICULTURE****Certification Regarding Debarment, Suspension, Ineligibility  
and Voluntary Exclusion - Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date



## INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

FNS Program Coverage Under Nonprocurement Debarment and Suspension Requirements

Program transactions that will be covered:

1. NCP agreements
2. FNS and HNIS grants and cooperative agreements administered by Contracts Br., ASD
3. State/local agreements for:
  - NET
  - WIC
  - CSFP
  - TEFAP
4. Procurement contracts over \$25,000 at the grantee and subgrantee level (all programs). Examples: State agency procurement with SAE funds, and food service management company contracts under the Child Nutrition Programs.
5. Procurement contracts, regardless of amount, at the grantee and subgrantee level involving principal investigators or providers of federally-required audit services (all programs).
6. Other nonprocurement program transactions at the grantee and subgrantee levels (all programs). Examples: State or local commodity processing agreements, and WIC rebate agreements.

Program transactions that will not be covered:

1. FNS/State, State/local, and ROAP agreements for:
  - FSP (incl. Nutrition Assistance Block Grants to PR and CNMI)
  - CNPs (incl. SAE)
  - NPE
  - FDP/IR
  - FD to charitable institutions and summer camps
2. FNS/State agreements only:
  - NET
  - WIC
  - CSFP
  - TEFAP
3. FS authorization and disqualification system for authorized firms and meal services
4. Transactions pursuant to National or Agency-recognized disasters

**U.S. DEPARTMENT OF AGRICULTURE**

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**CERTIFICATION REGARDING  
DRUG-FREE WORKPLACE REQUIREMENTS (GRANTS)  
ALTERNATIVE I - FOR GRANTEEES OTHER THAN INDIVIDUALS**

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This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), 7 CFR Part 3017, Subpart F, Section 3017.600, Purpose. The regulations were published as Part II of the January 31, 1989 Federal Register (pages 4947-4952). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the grant.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

Alternative I

(A) The grantee certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about --
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
  - (1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (Street address, city, county, State, zip code)

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Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the grantee is providing the certification set out on pages 1 and 2.
2. The certification set out on pages 1 and 2 is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Drug-Free Workplace Requirements for FNS Grantees - Questions and Answers

1. Q. Who do these requirements apply to?
  - A. The drug-free workplace requirements apply only to direct grantees of FNS. Essentially, these are State agencies that are under agreement with FNS to administer FNS Programs, and sponsors participating in FNS Programs through direct agreements with FNS Regional Offices (ROAP sponsors). Also included are recipients of discretionary grant awards that are administered through the Contracts Branch, Administrative Services Division, e.g., certain Food Stamp Demonstration Project awards. Subgrants, contracts, and other transactions that come under direct grants are not subject to these requirements. Also, direct FNS agreements that are not grants, as that term is defined in the common rule, are excluded, e.g., NCP agreements.
2. Q. What is a "controlled substance" under these requirements?
  - A. In defining "controlled substance", the common rule refers to schedules I through V of section 202 of the Controlled Substances Act and 21 CFR 1300.11 through 1300.15 of the Drug Enforcement Administration's (DEA) regulations. (The correct citations, however, for the DEA regulations are 21 CFR 1308.11 through 1308.15.) As the schedules of controlled substances established by the Controlled Substances Act are changed, updated, and republished, they are set forth in these DEA regulations. A copy of these regulations, current as of April 1, 1988, is attached.
3. Q. Grantees other than individuals must specify the site(s) for the performance of work done in connection with the specific grant for which they are providing a drug-free workplace certification statement. The preamble to the common rule states that "The term "site for the performance of work" ... is not further defined. It is intended that the grantee will determine what the "site for the performance of work" is and specify such in the grantee's certification." However, many FNS grantees, particularly State agencies, have substantial monitoring, training, and other responsibilities which make it difficult or impossible to determine in advance where all the "sites for the performance of work" will be during the grant period. How can a State agency or other grantee deal with this?

- A. Since it is the grantee's responsibility to determine and specify the site(s), FNS cannot specify how a grantee should do this. However, FNS may respond to inquiries by offering advice on what we would consider to be reasonable in such cases. With that as background, grantees may specify only their fixed work site(s) along with the following or similar statement: "and other sites, as determined by the grantee during the grant period, where work will be performed under the grant(s)".
4. Q. Does the "place of performance" for ROAP child care sponsoring organizations include the individual day care centers or day care home provider's premises?
- A. No. The relationship between the sponsor and the center or provider is considered a subgrant and, therefore, not subject to the drug-free workplace requirements.
5. Q. Do sponsors of the Summer Food Service Program have to list all of the sites where program meals will be served?
- A. No. Since the sponsor application contains all of the necessary site information, sponsors may simply make reference to their application (to cover feeding sites) when completing the certification statement.
6. Q. Section B. of the certification form supplied by the Department contains space for the grantee to indicate the "PR/Award Number or Project Name". What does this mean for FNS grantees?
- A. Since this is a generic term to be used primarily for discretionary grant awards, it doesn't mean anything for most FNS grants. FNS grantees should use this space to describe what grant(s) the certification statement applies to, e.g., Programs covered by the Form FNS-74 for F.Y. 1990.
7. Q. The common rule states that a grantee shall make the required certification for each grant. Does this mean that a ROAP private school participating in the NSLP and SBP has to complete two certification forms?
- A. No. It is the Department's position that one certification for each agreement is reasonable and sufficient. Since the agreement with the private school would cover both programs, only one certification would be needed.

8. Q. The text of the common rule states that a State may submit a single annual certification to each Federal agency (e.g., USDA) from which it receives grants. The additional supplementary information provided by USDA advises State agencies where to forward such single certifications for USDA. Who actually has the option to submit a single certification, a State or a State agency?

A. Both. Unless amended, the definitions of the debarment and suspension portion of the common rule apply to the drug-free workplace portion as well. Under those definitions, "State" is defined to include State agencies. Therefore, it would be up to each State to determine if single certifications would be used for each State agency or the State as a whole.

9. Q. How will FNS know if a State has elected the single certification option?

A. The Department's Office of Finance and Management will advise FNS Headquarters on any single certifications received by USDA. FNS Headquarters will in turn notify the appropriate Region(s). In addition, FNS plans to revise its Federal/State agreement forms to include the drug-free workplace certification requirements and to allow State agencies the option of completing the certification or indicating that a single State or State agency certification has been submitted to USDA.

10. Q. In the past, revisions to agreement forms have taken quite a long time. If the revised Federal/State agreement forms are not ready in time for the next renewal cycle, how will the drug-free workplace certifications be handled?

A. If the State agency has not submitted a single certification to USDA, regional offices would obtain a separate drug-free workplace certification statement from the State agency at the time of agreement renewal. The certification statement, which is specified in the common rule, could be supplied by the State agency on its own form or on the form supplied by the Department for this purpose. This form would also be used for ROAP agreement renewals in the event that revised ROAP agreement forms are not ready.

11. Q. Is a grantee supposed to have a drug-free workplace program in place upon signing the certification?

A. No. The grantee certifies that it will provide a drug-

free workplace by implementing a 7-point program. The common rule and the certification itself don't specify when this has to be done but we would expect grantees to put their drug-free workplace programs in place as soon as they can.

12.Q. Since the drug-free workplace requirements are being implemented governmentwide, State agencies will probably have a pretty good idea of what is required and be in the position to implement a drug-free workplace program quite quickly. On the other hand, ROAP sponsors that receive Federal assistance only from FNS, will probably not be as well informed. Is there any material available that would help our small grantees set up drug-free workplace programs?

A. Yes. The Department's Office of Finance and Management (OFM) has developed a pamphlet entitled "Model Drug-Free Workplace Program" that is designed to help small grantees establish a basic program. A camera ready copy of the pamphlet and OFM's transmittal memorandum are attached. Regions may xerox this pamphlet and make it available to their ROAP sponsors. Additional drug information applicable to the workplace may also be obtained from the U.S. government's clearinghouse of pamphlets, audiovisual materials and resource materials on drug and alcohol abuse. A publications list is available from the clearinghouse on request. Grantees may write or call:

The National Clearinghouse for  
Alcohol and Drug Information  
P.O. Box 2345  
Rockville, Md. 20852  
(301) 468-2600

Grantees may also be able to obtain information or assistance from local community organizations that provide drug abuse treatment or counseling.



**PART 1308—SCHEDULES OF  
CONTROLLED SUBSTANCES**

**GENERAL INFORMATION**

**§ 1308.01 Scope of Part 1308.**

Schedules of controlled substances established by section 202 of the Act (21 U.S.C. 812), as they are changed, updated, and republished from time to time, are set forth in this part.

**§ 1308.02 Definitions.**

As used in this part, the following terms shall have the meanings specified:

(a) The term "Act" means the Controlled Substance Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) The term "hearing" means any hearing held pursuant to this part for the issuance, amendment, or repeal of any rule issuable pursuant to section 201 of the Act.

(c) The term "isomer" means the optical isomer, except as used in § 1308.11(d) and § 1308.12(b)(4). As used in § 1308.11(d), the term "isomer" means the optical, positional, or geometric isomer. As used in § 1308.12(b)(4), the term "isomer" means the optical or geometric isomer.

(d) The term "interested person" means any person adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act.

(e) The term "narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(2) Poppy straw and concentrate of poppy straw.

(3) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ec-

**GENERAL INFORMATION**

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**AUTHORITY:** 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

**SOURCE:** 38 FR 8254, Mar. 30, 1973, unless otherwise noted. Redesignated at 38 FR 26609, Sept. 24, 1973.

**EDITORIAL NOTE:** Nomenclature changes affecting this part, appear at 38 FR 26609, Sept. 24, 1973.

# § 1308.03

gonine or their salts have been removed.

(4) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(5) Ecgonine, its derivatives, their salts, isomers and salts of isomers.

(6) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraphs (1) through (5).

(f) The term "proceeding" means all actions taken for the issuance, amendment, or repeal of any rule issued pursuant to section 201 of the Act, commencing with the publication by the Administrator of the proposed rule, amended rule, or repeal in the FEDERAL REGISTER.

(g) Any term not defined in this section shall have the definition set forth in section 102 and 1001 of the Act (21 U.S.C. 802 and 951) and § 1301.02 of this chapter.

[38 FR 8254, Mar. 30, 1973. Redesignated at 38 FR 26609, Sept. 24, 1973, and amended at 51 FR 15317, Apr. 23, 1986]

## § 1308.03 Administration Controlled Substances Code Number.

(a) Each controlled substance, or basic class thereof, has been assigned an "Administration Controlled Substances Code Number" for purposes of identification of the substances or class on certain Certificates of Registration issued by the Administration pursuant to §§ 1301.44 and 1311.43 of this chapter and on certain order forms issued by the Administration pursuant to § 1305.05(d) of this chapter. Applicants for procurement and/or individual manufacturing quotas must include the appropriate code number on the application as required in §§ 1303.12(b) and 1303.22(a) of this chapter. Applicants for import and export permits must include the appropriate code number on the application as required in §§ 1312.12(a) and 1312.22(a) of this chapter. Authorized registrants who desire to import or export a controlled substance for which an import or export permit is not required must include the appropriate Administration Controlled Substances Code Number beneath or beside the name of each controlled substance listed on the DEA Form 236 (Controlled Substance Import/Export

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Declaration) which is executed for such importation or exportation as required in §§ 1312.18(c) and 1312.27(b) of this chapter.

(b) Except as stated in paragraph (a) of this section, no applicant or registrant is required to use the Administration Controlled Substances Code Number for any purpose.

[38 FR 8254, Mar. 30, 1973. Redesignated at 38 FR 26609, Sept. 24, 1973 and amended at 51 FR 15318, Apr. 23, 1986]

## § 1308.04 Submission of information by manufacturers.

(a) Each person who manufactures, packages, repackages, labels, relabels, or distributes under his own label any product (including any compound, mixture, or preparation, diagnostic, reagent, buffer, or biological) containing any quantity of any controlled substance (whether such product is itself controlled or is excepted, exempted, or excluded from some or all controls pursuant to § 1308.21-24 or § 1308.31-32) shall submit information required in paragraph (b) of this section for each such product being manufactured or sold on July 1, 1972. The information should be submitted by registered mail, return receipt requested, to the Regulatory Support Section, Attention: Project Label, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537, by August 31, 1972. In the case of new products manufactured after July 1, 1972, or new dosage forms or other unit forms manufactured after July 1, 1972, or changes in information submitted by August 31, 1972, the registrant shall submit the information regarding such item within 30 days after the date on which the manufacture commences or information change occurs. In the case of products, the manufacture of which is discontinued after July 1, 1972, the registrant shall submit notice of such discontinuance within 30 days after the date on which manufacture ceases. In the case of products the manufacture of which was discontinued before July 1, 1972, which are still being sold, the registrant shall submit a notice of such discontinuance with his initial submission.

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(b) Two labels or other documents reflecting the following information shall be submitted with reference to each dosage form or other unit form of each item containing any quantity of any controlled substance:

(1) The trade name, brand name, or other commercial name of the product;

(2) The generic or chemical name and quantity of each active ingredient, including both controlled and noncontrolled substances (if any of this information is a proprietary trade secret, please indicate those portions);

(3) The National Drug Code Number assigned to the product, if any; and

(4) The weight (in metric measure) of each dosage unit or the weight (in metric measure) of the controlled substance per 100 grams of finished product for all items containing any quantity of any narcotic controlled substance in solid dosage forms.

(21 U.S.C. 821 and 871(b))

[38 FR 8254, Mar. 30, 1973. Redesignated at 38 FR 26609, Sept. 24, 1973, and amended at 46 FR 28841, May 29, 1981]

## SCHEDULES

### § 1308.11 Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) *Opiates*. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of paragraph (b)(34) only, the term isomer includes the optical and geometric isomers):

- (1) Acetyl-alpha-methylphenethyl (N-(1-(1-methyl-2-phenylethyl)-4-piperidinyl)-N-phenylacetamide)..... 9815
- (2) Acetylmetadol..... 9601
- (3) Alkyprodine..... 9502
- (4) Alphacetylmethadol..... 9603
- (5) Alphameprodine..... 9604
- (6) Alphamethadol..... 9605

(c) *Optium derivatives*. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (7) Alpha-methylphenethyl (N-(1-(1-alpha-methyl-beta-phenylethyl)-4-piperidinyl) propionamide; 1-(1-methyl-2-phenylethyl)-4-(N-propionyl) piperidine)..... 9814
- (8) Alpha-methylthiolphenethyl (N-(1-methyl-2-(2-thienylethyl)-4-piperidinyl)-N-phenylpropanamide)..... 9832
- (9) Benzethidine..... 9606
- (10) Betacetylmethadol..... 9607
- (11) Beta-hydroxyphenethyl (N-(1-(2-hydroxy-2-phenylethyl)-4-piperidinyl)-N-phenylpropanamide)..... 9830
- (12) Beta-hydroxy-3-methylphenethyl (other name: N-(1-(2-hydroxy-3-methylphenylethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide)..... 9831
- (13) Belameprodine..... 9608
- (14) Belamethadol..... 9609
- (15) Belaprodine..... 9611
- (16) Conlazene..... 9612
- (17) Dextromoramide..... 9613
- (18) Dampromide..... 9615
- (19) Diethylthambutene..... 9616
- (20) Difenoxin..... 9186
- (21) Dimenoxadol..... 9617
- (22) Dimethaphenol..... 9618
- (23) Dimethylthambutene..... 9619
- (24) Doxaphetyl butyrate..... 9621
- (25) Deltaprodine..... 9622
- (26) Ethylmethylthambutene..... 9623
- (27) Etonazene..... 9624
- (28) Etorphine..... 9625
- (29) Furethidine..... 9626
- (30) Hydroxypethidine..... 9627
- (31) Ketobemidone..... 9628
- (32) Levomoramide..... 9629
- (33) Levophenacetylmorphan..... 9631
- (34) 3-Methylphenethyl (N-(3-methyl-1-(2-phenylethyl)-4-piperidinyl)-N-phenylpropanamide)..... 9813
- (35) 3-methylthiolphenethyl (N-(3-methyl-1-(2-phenylethyl)-4-piperidinyl)-N-phenylpropanamide)..... 9833
- (36) Morpheridine..... 9632
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine)..... 9661
- (38) Noracetylmethadol..... 9633
- (39) Norlevorphanol..... 9634
- (40) Normethadone..... 9635
- (41) Norpropine..... 9636
- (42) Para-fluorophenethyl (N-(4-fluorophenyl)-N-(1-(2-phenylethyl)-4-piperidinyl) propionamide)..... 9812
- (43) PEPAP (1-(2-phenylethyl)-4-phenyl-4-acetoxypiperidine)..... 9663
- (44) Phenadoxone..... 9637
- (45) Phenamprodine..... 9638
- (46) Phenazocine..... 9647
- (47) Phenomorphan..... 9641
- (48) Prizamide..... 9642
- (49) Proheptazine..... 9643
- (50) Propidine..... 9644
- (51) Propiram..... 9649
- (52) Racemoramide..... 9645
- (53) Thiolphenethyl (N-phenyl-N-(1-(2-thienylethyl)-4-piperidinyl)-propanamide)..... 9835
- (54) Tildine..... 9750
- (55) Trimperidine..... 9646

(1) Acetorphine	9319
(2) Acetylhydromorphone	9051
(3) Benzylmorphine	9052
(4) Codeine methylbromide	9070
(5) Codeine-N-Oxide	9054
(6) Cytenorphine	9055
(7) Desomorphine	9145
(8) Dihydromorphine	9235
(9) Dolebanol	9056
(10) Etorphine (except hydrochloride salt)	9250
(11) Heroin	9301
(12) Hydromorphone	9302
(13) Methylhydromorphone	9304
(14) Morphine methylbromide	9305
(15) Morphine methylsulfonate	9306
(16) Morphine-N-Oxide	9307
(17) Myrophine	9308
(18) Nicocodene	9309
(19) Nicomorphine	9312
(20) Normorphine	9313
(21) Prolcodine	9314
(22) Thebicon	9315

(d) **Hallucinogenic substances.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine	7381
Some trade or other names: 4-bromo-2,5-dimethoxy- $\alpha$ -methylphenethylamine; 4-bromo-2,5-DMA	
(2) 2,5-dimethoxyamphetamine	7396
Some trade or other names: 2,5-dimethoxy- $\alpha$ -methylphenethylamine; 2,5-DMA	
(3) 4-methoxyamphetamine	7411
Some trade or other names: 4-methoxy- $\alpha$ -methylphenethylamine; paramethoxyamphetamine, PMA	
(4) 5-methoxy-3,4-methylenedioxy-amphetamine	7401
(5) 4-methyl-2,5-dimethoxy-amphetamine	7395
Some trade and other names: "DOM"; and "STP"	
oxy- $\alpha$ -methylphenethylamine; "DOM"; and "STP"	
(6) 3,4-methylenedioxy amphetamine	7400
(7) 3,4-methylenedioxymethamphetamine (MDMA)	7405
(8) 3,4,5-trimethoxy amphetamine	7390
(9) Bufotenine	7433
Some trade and other names: 3-( $\beta$ -O-methylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminomethyl)-5-indolol; N, N-dimethylisoserotonin; 5-hydroxy-N,N-dimethylphenethylamine; mescaline	
(10) Diethylphenylamine	7434
Some trade and other names: N,N-Diethylphenylamine; DET	
(11) Dimethylphenylamine	7435
Some trade or other names: DMT	
(12) Bogaine	7250

Some trade and other names: 7-Ethyl-6,6,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b] indole; Tabernanthe boga	7315
(13) Lysergic acid diethylamide	7350
(14) Marhuana	7381
(15) Mescaline	
(16) Parahexyl—7374; some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-unmethyl-8H-dibenzot[6,6]pyran; Synhexyl	7415
(17) Peyote	
Meaning all parts of the plant presently classified botanically as <i>Lophophora williamsii</i> Lemare, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts	
(Interpret 21 USC 812(c), Schedule (C) (12))	
(18) N-ethyl-3-piperidyl benzilate	7482
(19) N-methyl-3-piperidyl benzilate	7484
(20) Psilocybin	7437
(21) Psilocyn	7438
(22) Tetrahydrocannabinols	7370
Synthetic equivalents of the substances contained in the plant, or in the resinous extracts of <i>Cannabis</i> , sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:	
$\Delta^1$ cis or trans tetrahydrocannabinol, and their optical isomers	
$\Delta^6$ cis or trans tetrahydrocannabinol, and their optical isomers	
$\Delta^3,4$ cis or trans tetrahydrocannabinol, and its optical isomers	
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)	
(23) Ethylamine analog of phencyclidine	7455
Some trade or other names: N-ethyl-1-phenylcyclohexylmethylamine; (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE	
(24) Pyrididine analog of phencyclidine	7458
Some trade or other names: 1-(1-phenylcyclohexyl)pyrididine, PCPY, PHP	
(25) Thiophene analog of phencyclidine	7470
Some trade or other names: 1-(1-(2-thienyl)cyclohexyl)pyrididine, 2-thienylanalog of phencyclidine, TPCP, TCP	

(e) **Depressants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Meclizolone	2572
(2) Methaqualone	2565

(f) **Stimulants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylamine	1503
(2) N-ethylamphetamine	1475

(g) **Temporary listing of substances subject to emergency scheduling.** Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-(1-benzyl-4-piperidyl)-N-phenylpropanamide (benzylphenyl), its optical isomers, salts and salts of isomers	9819
(2) N-(1-(2-thenylmethyl-4-piperidyl)-N-phenylpropanamide (phenylphenyl), its optical isomers, salts and salts of isomers	9834
(3) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-methylenedioxyphenethylamine, N-ethyl MDA, MDE, and MDEA)	7404
(4) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-methylenedioxyphenethylamine, and N-hydroxy MDA)	7402
(5) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline)	1590

[39 FR 22141, June 20, 1974]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1308.11, see the List of CFR Sections Affected in the Finding Aids section of this volume.

## § 1308.12 Schedule II.

(a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the Controlled Substances Code Number set forth opposite it.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

(1) Raw opium	9600
(2) Opium extracts	9610
(3) Opium fluid	9620
(4) Powdered opium	9639
(5) Granulated opium	9640
(6) Tincture of opium	9630
(7) Codeine	9050
(8) Ethylmorphine	9190
(9) Etorphine hydrochloride	9059
(10) Hydromorphone	9193
(11) Hydromorphone	9150
(12) Meperon	9280
(13) Morphine	9300
(14) Oxycodone	9143
(15) Oxymorphone	9652
(16) Thebaine	9333

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b) (1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves (including cocaine (9041) and ecgonine (9180) and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy), 9670.

(c) **Optates.** Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical design-

nation, dextrorphan and levopropoxy-  
phene excepted:

(1) Alfentanil.....	9737
(2) Alfentanone.....	9010
(3) Anileridine.....	9020
(4) Butorphanol.....	9800
(5) Bulk dextropropoxyphene (non-dosage forms).....	9273
(6) Dihydrocodeine.....	9120
(7) Diphenoxylate.....	9170
(8) Fentanyl.....	9801
(9) Isomethadone.....	9226
(10) Levorphanol.....	9210
(11) Meperidine.....	9230
(12) Metazocine.....	9240
(13) Methadone.....	9250
(14) Methadone-intermediate, 4-cyano-2-dimethyl- moro-4,4-diphenyl butane.....	9254
(15) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.....	9802
(16) Pethidine (meperidine).....	9230
(17) Pethidine-intermediate-A, 4-cyano-1-methyl-4, phenylpiperidine.....	9232
(18) Pethidine-intermediate-B, ethyl-4-phenylpiper- idine-4-carboxylate.....	9233
(19) Pethidine-intermediate-C, 1-methyl-4-phenylpiper- idine-4-carboxylic acid.....	9234
(20) Phenazocine.....	9715
(21) Piminoxone.....	9730
(22) Racemorphan.....	9732
(23) Racemorphan.....	9733
(24) Sufentanil.....	9740

(d) *Stimulants*. Unless specifically  
excepted or unless listed in another  
schedule, any material, compound,  
mixture, or preparation which con-  
tains any quantity of the following  
substances having a stimulant effect  
on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.....	1100
(2) Methamphetamine, its salts, isomers, and salts of its isomers.....	1105
(3) Phenmetrazine and its salts.....	1631
(4) Methylphenidate.....	1724

(e) *Depressants*. Unless specifically  
excepted or unless listed in another  
schedule, any material, compound,  
mixture, or preparation which con-  
tains any quantity of the following  
substances having a depressant effect  
on the central nervous system, includ-  
ing its salts, isomers, and salts of iso-  
mers whenever the existence of such  
salts, isomers, and salts of isomers is  
possible within the specific chemical  
designation:

(1) Amobarbital.....	2125
(2) Pentobarbital.....	2270
(3) Phenobarbital.....	7471
(4) Secobarbital.....	2315

(f) *Hallucinogenic substances*.

(1) Dronabinol (synthetic) in sesame oil and encapsu- lated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product.....	7369
(Some other names for dronabinol: (6aR-trans)- 6a,7,8,10a-tetrahydro-6,8,8-dimethyl-3-pentyl- 6H-dibenzol[b,d]pyran-1-ol, or (-)-delta-9, (trans)-tetrahydrocannabinol)	
(2) Nabilone.....	7379
(Another name for nabilone: (-)-trans-3-(1,1-d, methylheptyl)-6,6a,7,8,10,10a-hexahydro-1, hydroxy-6,6-dimethyl-9H-dibenzol[b,d]pyran-9, one)	

(g) *Immediate precursors*. Unless  
specifically excepted or unless listed in  
another schedule, any material, com-  
pound, mixture, or preparation which  
contains any quantity of the following  
substances:

(1) Immediate precursor to amphet-  
amine and methamphetamine:

(i) Phenylacetone.....	8501
(Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;	

(2) Immediate precursors to phenyl-  
clidine (PCP):

(i) 1-phenylcyclohexanamine.....	7460
(ii) 1-phenylcyclohexanecarbonitrile (PCN).....	8603

[39 FR 22142, June 20, 1974]

EDITORIAL NOTE: For FEDERAL REGISTER ci-  
tations affecting § 1308.12, see the List of  
CFR Sections Affected in the Finding Aids  
section of this volume.

§ 1308.13 Schedule III.

(a) Schedule III shall consist of the  
drugs and other substances, by what-  
ever official name, common or usual  
name, chemical name, or brand name  
designated, listed in this section. Each  
drug or substance has been assigned  
the DEA Controlled Substances Code  
Number set forth opposite it.

(b) *Stimulants*. Unless specifically  
excepted or unless listed in another  
schedule, any material, compound,  
mixture, or preparation which con-  
tains any quantity of the following  
substances having a stimulant effect  
on the central nervous system, includ-  
ing its salts, isomers (whether optical,  
position, or geometric), and salts of  
such isomers whenever the existence

of such salts, isomers, and salts of iso-  
mers is possible within the specific  
chemical designation:

(1) These compounds, mixtures, or preparations in dosage unit form containing any stimulant sub- stances listed in schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under § 308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of con- trolled substances.....	1405
(2) Benzphetamine.....	1228
(3) Chlorpheniramine.....	1645
(4) Codeine.....	1647
(5) Phenmetrazine.....	1615

(c) *Depressants*. Unless specifically  
excepted or unless listed in another  
schedule, any material, compound,  
mixture, or preparation which con-  
tains any quantity of the following  
substances having a depressant effect  
on the central nervous system:

(1) Any compound, mixture or preparation containing: (i) Amobarbital.....	2126
(ii) Secobarbital.....	2316
(iii) Pentobarbital.....	2271
or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.	
(2) Any suppository dosage form containing: (i) Amobarbital.....	2126
(ii) Secobarbital.....	2316
(iii) Pentobarbital.....	2271
or any salt of any of these drugs and approved by the Food and Drug Administration for mar- keting only as a suppository.	

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.....	2100
(4) Chlorzoxazone.....	2510
(5) Glutethimide.....	2550
(6) Lysergic acid.....	7300
(7) Lysergic acid amide.....	7310
(8) Mephylol.....	2575
(9) Sulfonethymethane.....	2600
(10) Sulfonethymethane.....	2605
(11) Sulfonethymethane.....	2610
(12) Telameter and zolazepam or any salt thereof.....	7295
Some trade or other names for a telameter- zolazepam combination product: Telazol.....	
Some trade or other names for lidamine: 2-(ethylamino)-2-(2-phenyl)-cyclohexanone.....	
Some trade or other names for zolazepam: 4-(2-ethylamino)-5,8-dihydro-1,3,8- trimethylpyrazolo[3,4-e] [1,4]-diazepin- 7(1H)-one, fluprazepam.....	

(d) Nalorphine 9400.  
(e) *Narcotic Drugs*. Unless specifically  
excepted or unless listed in another  
schedule, any material, compound,  
mixture, or preparation containing  
any of the following narcotic drugs, or  
their salts calculated as the free anhy-  
drous base or alkaloid, in limited quan-  
ties as set forth below:

(1) Not more than 1 milligram of diacoin and not less than 25 micrograms of atropine sulfate per dosage unit.....	9187
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drous base or alkaloid, in limited quan-  
ties as set forth below:

(1) Not more than 1.8 grams of codeine per 100 milliliters, or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.....	9803
(2) Not more than 1.8 grams of codeine per 100 milliliters, or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic, ingredients in recognized therapeutic amounts.....	9804
(3) Not more than 300 milligrams of dihydrocodeinone (hydrocodeinone) per 100 milliliters, or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.....	9805
(4) Not more than 300 milligrams of dihydrocodeinone (hydrocodeinone) per 100 milliliters, or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized thera- peutic amounts.....	9806
(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters, or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.....	9807
(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters, or not more than 15 milligrams per dosage unit, with one or more active, nonnar- cotic ingredients in recognized therapeutic amounts.....	9808
(7) Not more than 500 milligrams of opium per 100 milliliters, or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.....	9809
(8) Not more than 50 milligrams of morphine per 100 milliliters, or per 100 grams, with one or more active, nonnarcotic ingredients in recognized thera- peutic amounts.....	9810

[39 FR 22142, June 20, 1974, as amended at  
41 FR 43401, Oct. 1, 1976; 43 FR 3359, Jan.  
25, 1978; 44 FR 40888, July 13, 1979; 46 FR  
52334, Oct. 27, 1981; 51 FR 5320, Feb. 13,  
1986; 52 FR 2222, Jan. 21, 1987; 52 FR 5952,  
Feb. 27, 1987]

§ 1308.14 Schedule IV.

(a) Schedule IV shall consist of the  
drugs and other substances, by what-  
ever official name, common or usual  
name, chemical name, or brand name  
designated, listed in this section. Each  
drug or substance has been assigned  
the DEA Controlled Substances Code  
Number set forth opposite it.

(b) *Narcotic drugs*. Unless specific-  
ally excepted or unless listed in another  
schedule, any material, compound,  
mixture, or preparation containing  
any of the following narcotic drugs, or  
their salts calculated as the free anhy-  
drous base or alkaloid, in limited quan-  
ties as set forth below:

(1) Not more than 1 milligram of diacoin and not less than 25 micrograms of atropine sulfate per dosage unit.....	9187
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(2) Despropoxyphene (as the (+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)..... 9278

(c) *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam.....	2892
(2) Barbitol.....	2145
(3) Bromazepam.....	2748
(4) Camazepam.....	2748
(5) Chloral hydrate.....	2460
(6) Chloralhydrate.....	2465
(7) Chlorazepate.....	2744
(8) Clonazepam.....	2751
(9) Clonazepam.....	2737
(10) Clonazepam.....	2786
(11) Clonazepam.....	2752
(12) Clonazepam.....	2753
(13) Clonazepam.....	2754
(14) Clonazepam.....	2765
(15) Clonazepam.....	2756
(16) Ethchlorvynol.....	2540
(17) Ethchlorvynol.....	2545
(18) Ethyl loflazepam.....	2758
(19) Fludazepam.....	2759
(20) Fludazepam.....	2763
(21) Fludazepam.....	2767
(22) Halazepam.....	2762
(23) Haloxazolam.....	2771
(24) Ketazolam.....	2772
(25) Lorazepam.....	2773
(26) Lorazepam.....	2885
(27) Lorazepam.....	2774
(28) Mebendazole.....	2800
(29) Medazepam.....	2836
(30) Meperidine.....	2820
(31) Methohexital.....	2284
(32) Methoxyphenobarbital (mephobarbital).....	2250
(33) Midazolam.....	2884
(34) Nimetazepam.....	2837
(35) Nitrazepam.....	2834
(36) Nordazepam.....	2838
(37) Oxazepam.....	2835
(38) Oxazolam.....	2839
(39) Paraldehyde.....	2591
(40) Phenobarbital.....	2591
(41) Phenobarbital.....	2285
(42) Phazepam.....	2883
(43) Prazepam.....	2764
(44) Quazepam.....	2881
(45) Temazepam.....	2825
(46) Tetrazepam.....	2886
(47) Triazolam.....	2887

(d) *Fenfluramine.* Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of

such salts, isomers, and salts of isomers is possible:

(1) Fenfluramine..... 1870

(e) *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Diethylpropion.....	1810
(2) Mazindol.....	1605
(3) Pemoline (including organometallic complexes and chelates thereof).....	1530
(4) Phenethers.....	1840
(5) Pseudoephedrine.....	1750
(6) SPA (1-(1-dimethylamino-1,2-diphenylethane).....	1835

(f) *Other substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

(1) Penitazocine..... 9709

(39 FR 22143, June 20, 1974)

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1308.14, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 1308.15 Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) Buprenorphine..... 9064

(c) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculat-

ed as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 milligrams of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(39 FR 22143, June 20, 1974, as amended at 43 FR 38363, Aug. 28, 1978; 44 FR 40888, July 13, 1979; 47 FR 49841, Nov. 3, 1982; 50 FR 8108, Feb. 28, 1985; 52 FR 5952, Feb. 27, 1987)



March 20, 1989

REPLY TO  
ATTN OF: 2400-2-2

SUBJECT: Drug-Free Workplace - Model Program Pamphlet

TO: Deputy Administrators for Management

One requirement of the Drug-Free Workplace Act of 1988 (Act), for Federal Grantees, other than individuals, is that they formally certify that they will establish and make a good faith effort to maintain a drug-free workplace program. This program must include at the minimum, certain features which are specified in the Act. This certification requirement is mandatory for all grants and cooperative agreements signed on or after March 18, 1989.

Since many small grantee organizations may have difficulty setting up the required drug-free program, we are attaching a pamphlet that can help these organizations in getting the basic program off the ground. Agencies should encourage participants to expand or adjust this model program so as to meet their particular organizational needs. In particular, the drug-abuse awareness and employee assistance will probably require the participant to locate other resources within the State or community.

The Office of Finance and Management (OFM) has a limited number of "camera ready" copies of the pamphlet available and these copies have been designed to allow for field printing on standard paper using photocopy type equipment.

Agencies interested in using the pamphlet to help their program participants should contact Diane Carey on 382-1554. If there is sufficient interest, OFM will also consider requests for consolidated printing and central warehouse storage.

LARRY WILSON  
Director

Attachment

## How to Use this Pamphlet to Establish a Drug-Free Workplace Program

### Required Actions

- (1) The employer fills in the organization's contact name in the space provided on the *Employee Copy*.
- (2) The employer explains to the employee(s) the policy, drug-free awareness, and potential personnel action statements.
- (3) The employer removes the *Employer Copy* and provides the *Employee Copy* to the employee(s).

### Optional Ideas

- (1) The employer may want each employee to sign his/her name and date in the spaces provided on the employer's part of this pamphlet.
- (2) The employer may also want to sign his/her name as the authorized representative and fill in the name of the organization and date in the spaces provided on the employer's part of the pamphlet.
- (3) The employer may want to retain the *Employer Copy* for the employer's records.

# Model Drug-Free Workplace Program

*Organizations that receive grants from a Federal agency are required by the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) to certify that they will provide drug-free workplaces and establish a drug-free awareness program. Organizations that do not already have a drug-free workplace program may choose to use the model in this pamphlet to address the minimum requirements for a drug-free workplace program.*

## Policy

As a Federal grantee, I hereby notify employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in this workplace. As a condition of employment, employees must abide by this policy.

### Drug-Free Awareness

Drug abuse in the workplace has major adverse effects on the welfare of all citizens of the United States, and it results in lost productivity each year. Employees who use illegal drugs have three to four times more accidents while at work.

Employees with drug abuse problems should seek help. Employees desiring more information on the dangers of drug abuse in the workplace and those employees needing drug counseling, rehabilitation, or other employee assistance should contact:

\_\_\_\_\_ for assistance.

Employees will be referred to the appropriate resource for available counseling, rehabilitation or other assistance.

### Notice of Potential Personnel Actions for Illegal Drug Use On-the-Job

Penalties may be imposed upon employees for drug abuse violations occurring in our workplaces:

- (1) Employees must notify this employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
- (2) Within 30 days of receiving notice of any criminal drug statute conviction for a violation occurring in the workplace, this employer will take appropriate personnel action against such employee, up to and including termination; or
- (3) Within 30 days of receiving notice of any criminal drug statute conviction for a violation occurring in the workplace, this employer may require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

**Employee Copy**

## Employee Certification

- ✓ I understand the drug-free workplace policy.
- ✓ I agree, as a condition of my employment, to abide by the terms of this program.
- ✓ I agree to notify this employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

## Employer Statement

- ✓ I have explained the policy, drug-free awareness, and potential personnel action statements and have provided the employee's part of this pamphlet to the employee.

\_\_\_\_\_  
Authorized Employer Signature

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Date

**Employer Copy**



PART 3017 - GOVERNMENTWIDE DEBARMENT AND SUSPENSION  
(NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE  
WORKPLACE

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3017.630 Grantees' Responsibilities.

Appendix A to Part 3017 - Certification Regarding Debarment,  
Suspension, and Other Responsibility Matters - Primary Covered  
Transactions

Appendix B to Part 3017 - Certification Regarding Debarment,  
Suspension, Ineligibility and Voluntary Exclusion - Lower Tier  
Covered Transactions

Appendix C to Part 3017 - Certification Regarding Drug-Free  
Workplace Requirements.

Authority: 5 U.S.C. 301,  
Executive Order 12549,  
Sec. 5151-5160 of the Drug-Free Workplace Act of  
1988 (Pub. L. 100-690, Title V, Subtitle D).

Subpart A - General

§3017.100 Purpose.

(a) Executive order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement Section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under Section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in §3017.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

#### §3017.105 Definitions.

(a) Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) Affiliate. Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) Agency. Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(1) A USDA agency, when used in the context of USDA internal procedures or requirements, is any organizational unit of the Department of Agriculture with authority delegated in 7 CFR Part 2 to carry out primary covered transactions under USDA programs.

(d) Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-12).

(e) Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred. "

(g) Debarring official. An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(i) In USDA, the authority to act as a debarring official is not delegated below the agency head level.

(3) In USDA, each Under Secretary, Assistant Secretary, or agency head who has been delegated authority in Part 2 of this title to carry out a covered transaction is authorized to act as a debarring official in connection with such covered transaction.

(h) Indictment. Indictment for a criminal offense. Any information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) Ineligible. Excluded from participation in Federal nonprocurement programs pursuant to a determination of

ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects Such person's eligibility to participate in more than one covered transaction.

(j) Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) Nonprocurement List. The portion of the List of Parties Excluded from Federal Procurement or Nonprocurement Programs compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venture of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) Person. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign Governmental entities.

(o) Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.



(r) Respondent. A person against whom a debarment or suspension action has been initiated.

(s) State. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) Suspending official. An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(i) In USDA, the authority to act as a suspending official is not delegated below the agency head level.

(3) In USDA, each Under Secretary, Assistant Secretary, or agency head who has been delegated authority in Part 2 of this title to carry out a covered transaction is authorized to act as a suspending official in connection with such covered transaction.

(u) Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) Appeals officer. Any administrative law judge of the Office of Administrative Law Judges, Department of Agriculture.

(x) USDA. U.S. Department of Agriculture.

**§3017.110 Coverage.**

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) Covered transaction. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) Primary covered transaction. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban

Development in such agency's regulations governing debarment and suspension.

(ii) Lower tier covered transaction. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. §2304(g) and 41 U.S.C. §253(g) (currently \$25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally-required audit services.

(2) Exceptions. The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole

or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(3) USDA covered transactions. These USDA regulations apply to the Department's domestic assistance covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) including, except as noted in paragraph (a)(2) of this section: grants, cooperative agreements, scholarships, fellowships, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charged as direct or indirect costs, regardless of type ~~or~~ (including subtier awards under awards which are statutory entitlement or mandatory awards).

(b) Relationship to other sections. This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action,"

§3017.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in §3017.110(a). §3017.325, "Scope of debarment," and §3017.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) Relationship to Federal procurement activities.

Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

**§3017.115 Policy.**

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

#### **Subpart B - Effect of Action**

##### **§3017.200 Debarment or Suspension.**

(a) Primary covered transactions. Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to §3017.215.

(b) Lower tier covered transactions. Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see §3017.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) Exceptions. Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory),

including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

#### **§3017.205 Ineligible Persons.**

Persons who are ineligible, as defined in §3017.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

#### **§3017.210 Voluntary exclusion.**

Persons who accept voluntary exclusions under §3017.315 are excluded in accordance with the terms of their settlements.

USDA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

**§3017.215 Exception provision.**

USDA may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and §3017.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with §3017.505(a).

**§3017.220 Continuation of covered transactions.**

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in §3017.215.



**§3017.225 Failure to adhere to restrictions.**

Except as permitted under §3017.215 or §3017.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

**Subpart C - Debarment**

**§3017.300 General.**

The debarring official may debar a person for any of the causes in §3017.305, using procedures established in §§3017.310 through 3017.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§3017.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§3017.300 through 3017.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations or a procurement debarment by any Federal agency taken pursuant to 48 C.F.R. Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in §3017.215 or §3017.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under §3017.315 or of any settlement of a debarment or suspension action.

(5) Violation of any requirement of Subpart F of this Part, relating to providing a drug-free workplace, as set forth in §3017.615 of this Part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

#### **§3017.310 Procedures.**

USDA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§3017.311 through 3017.314.

§3017.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

(a) The decision to utilize agency personnel, the Office of the Inspector General (OIG), or other appropriate resources to conduct the investigation and develop the documentation required by paragraph (b) of this section is the responsibility of the agency possessing the information.

(b) Basic documentation shall be developed that includes but is not limited to:

(1) The name of the specific respondent(s) against whom the action is being proposed or taken;

(2) The reason(s) for proposing the debarment;

(3) The specific cause(s) for debarment from §3017.305;

(4) A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the need to debar;

(5) The recommended time period for the debarment;

(6) The potential effect and/or consequences that the debarment will have on the respondent(s);

(7) Copies of any relevant support documentation identified under this section.

(c) The debarring official shall be responsible for deciding whether or not to proceed with the action.

(d) The Office of the General Counsel (OGC) is responsible for :

(1) Reviewing the documentation and notices for legal sufficiency, and

(2) Providing any necessary coordination with the Department of Justice (DOJ).

**§3017.312 Notice of proposed debarment.**

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(1) Information on the specific debarment action proposed must be given.

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under §3017.305 for proposing debarment;

(d) Of the provisions of §§3017.311 through 3017.314, and any other USDA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

In USDA, the notice to the respondent shall be signed by the debarring official and transmitted by certified mail, return receipt requested. OGC will be consulted on all proposed debarment actions prior to the notice being sent to the respondent.

**§3017.313 Opportunity to contest proposed debarment.**

(a) Submission in opposition. Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) Additional proceedings as to disputed material facts.

(1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

**§3017.314 Debarring official's decision.**

(a) No additional proceedings necessary. In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(1) In USDA debarment actions where respondent(s) fail(s) to timely provide any submission in opposition, the action will be considered decided.

(b) Additional proceedings necessary.

(1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) Standard of proof. In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) Burden of proof. The burden of proof is on the agency proposing debarment.

(d) Notice of debarring official's decision.

(1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in §3017.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

(3) In USDA, the notice to the respondent shall be in writing, signed by the debarring official and transmitted by certified mail, return receipt requested. The OGC will be consulted on all proposed debarment actions prior to the notice being sent to the respondent.

#### **§3017.315 Settlement and voluntary exclusion.**

(a) When in the best interest of the Government, USDA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E - Responsibilities of GSA, USDA and Participants).

#### **§3017.320 Period of debarment.**

(a) Debarment shall be for a period commensurate with the seriousness of the causes(s). If a suspension precedes a



debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (see §3017.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§3017.311 through 3017.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction or civil judgment upon which the debarment was based;
- (3) Bona fide change in ownership or management;
- (4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

**7§3017.325 Scope of debarment.**

(a) Scope in general. (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§3017.311 through 3017.314).

(b) Imputing conduct. For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) Conduct imputed to participant. The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) Conduct imputed to individuals associated with participant. The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer,

director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) Conduct of one participant imputed to other participants in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

#### **Subpart D - Suspension**

##### **§3017.400 General.**

(a) The suspending official may suspend a person for any of the causes in §3017.405 using procedures established in §§3017.410 through 3017.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in §3017.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably

be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

**§3017.405 Causes for suspension.**

(a) Suspension may be imposed in accordance with the provisions of §§3017.400 through 3017.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in §3017.305(a); or

(2) That a cause for debarment under §3017.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

**§3017.410 Procedures.**

(a) Investigation and referral. Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension,

(1) The decision to utilize agency personnel, OIG or other appropriate resources to conduct the investigation and develop the documentation required by paragraph (a)(2) of this section is the responsibility of the agency possessing the information.

(2) Basic documentation shall be developed that includes but is not limited to:

(i) The name of the specific respondent(s) against whom the suspension is to be taken;

(ii) The reason(s) for proposing the suspension;

(iii) The specific cause(s) for suspension from section 3017.405;

(iv) A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the suspension;

(v) The recommended time period for the suspension;

(vi) The potential effect and/or consequences that the suspension will have on the respondent(s);

(vii) Copies of any relevant support documentation identified under this section.

(3) The suspending official shall be responsible for deciding whether or not to proceed with the suspension.

(4) The OGC is responsible for :

(i) Reviewing the documentation and notices for legal sufficiency, and

(ii) Providing any necessary coordination with the DOJ.

(b) Decisionmaking process. USDA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §§3017.411 through 3017.413.

**§3017.411 Notice of suspension.**

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

decision shall be rendered in accordance with the following provisions:

(a) No additional proceedings necessary. In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of DOJ advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument Submitted by the respondent, unless the suspending official extends this period for good cause.

(1) In USDA, the suspending official shall terminate the suspension immediately when additional proceedings to determine disputed facts have been denied on the basis of DOJ advice. The agency, however, reserves the right to proceed with the suspension when the DOJ completes its legal proceedings or is satisfied that the suspension no longer will prejudice DOJ's proceedings.

(2) In USDA suspension actions, where the respondent(s) fail(s) to timely provide any submission in opposition, the action will be considered decided.

(b) Additional proceedings necessary.

(1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the

evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or Civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(A) In USDA, such determination shall be made by the suspending official, after coordination with OGC.

(B) In USDA, the suspending official shall continue the suspension only if he/she determines, after consultation with OGC, that there is enough evidence to proceed without using the facts that DOJ has advised would prejudice the contemplated legal proceedings. If there is not such evidence, the suspension shall be terminated immediately without prejudice.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

#### **§3017.413 Suspending official's decision.**

The suspending official may modify or terminate the suspension (for example, see §3017.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under §3017.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §3017.411 through 3017.413 and any other USDA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

In USDA, the notice to the respondent shall be signed by the suspending official and transmitted by certified mail, return receipt requested. The OGC will be consulted on all proposed suspension actions prior to the notice being sent to the respondent.

**§3017.412 Opportunity to contest suspension.**

(a) Submission in opposition. Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) Additional proceedings as to disputed material facts.

(1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary



decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) Notice of suspending official's decision. Prompt written notice of the suspending official's decision shall be sent to the respondent.

(1) In USDA, the notice to the respondent shall be signed by the suspending official and transmitted by certified mail, return receipt requested. The OGC will be consulted on all proposed suspension actions prior to the notice being sent to the respondent. The notice shall include the following:

- (i) Reference to the previously issued notice of suspension;
- (ii) The reason(s) for the action taken in this notice.
- (iii) The effective date(s) of the suspension taken in this notice and, where appropriate, the period of the suspension;
- (iv) Advice that the suspension is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes a determination referred to in §3017.215.

**§3017.415 Period of suspension.**

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or

under Executive order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

#### **§3017.505 USDA responsibilities.**

(a) USDA shall provide GSA with current information concerning debarments, suspensions, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, USDA shall also provide GSA and OMB with information concerning all transactions in which an agency has granted exceptions under §3017.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, USDA shall advise GSA of the information set forth in §3017.500(b) and of the exceptions granted under §3017.215 within five working days after taking such actions.

(1) Each communication with GSA regarding additions, deletions, or changes to the Nonprocurement List shall be in

writing.

(c) USDA shall direct inquiries concerning listed persons to the agency that took the action.

(d) USDA officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) USDA officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

(f) USDA agencies shall provide the Office of Finance and Management (OFM) with a copy of any information provided to GSA pursuant to this section.

(g) USDA agencies shall notify GSA and OFM, in writing, of debarment or suspension decisions overturned on appeal under §3017.515.

**§3017.510 Participants' responsibilities.**

(a) Certification by participants in primary covered transactions. Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of

Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

(1) The suspending official shall notify the OGC which will notify the DOJ of the impending termination of a suspension.

#### **§3017.420 Scope of suspension.**

The scope of a suspension is the same as the scope of a debarment (see §3017.325), except that the procedures of ~~§§~~ 3017.410 through 3017.413 shall be used in imposing a suspension.

#### **Subpart E - Responsibilities of GSA, USDA and participants.**

#### **§3017.500 GSA responsibilities.**

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies

their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) Certification by participants in lower tier covered transactions.

(1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) Changed circumstances regarding certification. A participant shall provide immediate written notice to USDA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered

transactions shall provide the same updated notice to the participant to which it submitted its proposal.

**§3017.515 Appeal of debarment or suspension decisions.**

(a) If a decision to debar or suspend is made by a debarring or suspending official under §3017.314 or §3017.413, the respondent may appeal the decision to the Office of Administrative Law Judges (OALJ) by filing the appeal, in writing, to the Hearing Clerk, OALJ, United States Department of Agriculture, Washington, D.C. 20250. The appeal must be filed within 30 days of receiving the decision and it must specify the basis of the appeal. The decision of a debarring or suspending official under §3017.314 or §3017.413 may be vacated by the assigned appeals officer if the officer determines that the decision is:

- (1) Not in accordance with law;
- (2) Not based on the applicable standard of evidence; or
- (3) Arbitrary and capricious and an abuse of discretion.

(b) The appeals officer will base his/her decision solely upon the administrative record.

(c) Within 90 days of the date the appeal is filed with USDA's OALJ Hearing Clerk, the appeals officer will notify the respondent(s) in writing and the debarring or suspending official who took the action being appealed of his/her decision in the appeal. The notice must specify the reason(s) for the decision made by the appeals officer.

(d) The appeals officer's decision is final and is not appealable within USDA.

## **Subpart F - Drug-Free Workplace Requirements -- Grants**

### **§3017.600 Purpose.**

(a) The purpose of this Subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that --

(1) A grantee, other than an individual, shall certify to the USDA grantor agency that it will provide a drug-free workplace.

(2) A grantee who is an individual shall certify to the USDA grantor agency that he or she will not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with USDA are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

### **§3017.605 Definitions.**

(a) Except as amended in this section, the definitions of §3017.105 apply to this subpart.

(b) For purposes of this subpart--

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (12 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 - 1300.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine

violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a criminal statute involving the manufacture, distribution, dispensation, use or possession of any controlled substance;

(4) "Drug-Free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of controlled substances;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, or any establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by the Federal agency directly to a grantee. The term grant includes block grant and entitlement programs, whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans'



benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from the Federal agency.

(9) "Individual" means a natural person.

**§3017.610 Coverage.**

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

**§3017.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.**

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that --

(a) The grantee has made a false certification under §3017.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.) (a)-(g) of the certification for grantees other than individuals (Alternative I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternative II to Appendix C); or

(c) Such a number of employees of the grantee have been

convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

**§3017.620 Effect of violation.**

(a) In the event of a violation of this subpart as provided in §3017.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

- (1) Suspension of payments under the grant;
- (2) Suspension or termination of the grant; and
- (3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (see §3017.320 (a)(2) of this part).

**§3017.625 Exception provision.**

The agency head may waive, with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

**3017.630 Grantees' responsibilities.**

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

Appendix A - Certification Regarding Debarment, Suspension, and  
Other Responsibility Matters - Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all

lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other  
Responsibility Matters - Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, state or local) terminated for cause or default.

(2) where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B - Certification Regarding Debarment, Suspension,  
Ineligibility and Voluntary Exclusion - Lower Tier Covered  
Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is Providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions



and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the ~~the~~ method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is Suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

~~(2) Where the prospective lower tier participant is unable to~~

- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix C to Part 3017 - Certification Regarding Drug-Free Workplace Requirements.

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternative I applies.

4. For grantees who are individuals, Alternative II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternative I.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a Statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against

employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about --

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

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Alternative II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.